

**ASSEMBLY BUDGET COMMITTEE
AND THE
SENATE BUDGET SUBCOMMITTEE NO. 3 ON HEALTH AND HUMAN SERVICES**

***Third Oversight Hearing on Implementation of Recent Changes in the
In-Home Supportive Services (IHSS) Program***

**Wednesday, January 27, 2010, 1:30 to 3:30 PM
Room 4202, State Capitol**

AGENDA

- I. Opening Remarks from Chairs and Members**

- II. Update on IHSS Implementation of Provider Enrollment and Program Integrity Changes**
 - **John Wagner**, Director, California Department of Social Services (DSS)
 - **Pete Cervinka**, Program Deputy Director for Benefits and Services, DSS
 - **Eva Lopez**, Deputy Director, Adult Programs Division, DSS
 - **Robert O'Neill**, Deputy Director, Audits and Investigations Division, Department of Health Care Services
 - **Cathy Senderling-McDonald**, Senior Legislative Advocate, County Welfare Directors Association of California

- III. Feedback from Advocates and Prioritization of Continuing Issues**
 - **Deborah Doctor**, Legislative Advocate, Disability Rights California
 - **Mark Beckwith**, IHSS Consumer, Advocate with Northern California ADAPT, and Member, Advisory Board of Alameda County IHSS Public Authority
 - **Jovan Agee**, Political & Legislative Director, United Domestic Workers of America / AFSCME
 - **Gail Ennis**, President, California United Homecare Workers, SEIU / AFSCME Local 4034
 - **Helen Lopez**, Executive Director, San Bernardino IHSS Public Authority, representing the California Association of Public Authorities

- IV. Response from DSS and DHCS to Additional Issues Raised**

- V. Questions from Members and Closing Remarks**

Please note: Comment cards will be available and received at the hearing from members of the public who would like to submit written testimony.

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BACKGROUND

This is the third oversight hearing the Legislature is conducting to review implementation of major reforms in the In-Home Supportive Services (IHSS) program. These reforms were proposed by Governor Schwarzenegger and ultimately revised and adopted in Assembly Bills 4 and 19 of the Fourth Extraordinary Legislative Session of 2009 (Chapters 4 and 17, respectively), which were passed as part of the 2009-10 Budget agreement.

Major Reforms Adopted in 2009-10 Budget. A table on the program reform changes for IHSS adopted as part of the 2009-10 Budget is included in [Attachment A](#). The reforms range from a new provider enrollment process, including criminal background checks and provider orientations, to enhanced program integrity measures like social worker trainings, the development of protocols for targeted mailings and unannounced home visits, and the fingerprinting of recipients and providers.

Program Description. The IHSS program provides in-home personal care and domestic services to 460,000 qualified individuals who are blind, aged, or who have disabilities. These services, which include bowel and bladder care, bathing, grooming, paramedical services, housecleaning, meal preparation, laundry, grocery shopping, accompaniment to medical appointments, and protective supervision, allow recipients to stay in their homes and avoid institutionalization. Currently, there are approximately 385,000 IHSS individual providers statewide.

Oversight Hearings. The focus of earlier October and November, 2009 oversight hearings was the administration's November 1 implementation date for numerous provider enrollment changes impacting both new and existing providers, including criminal background checks, provider orientation, and appeals. The Committees received numerous letters from counties outlining critical issues in implementation, with some asserting their inability to implement the proposed changes. This hearing will review continuing concerns in those areas and look prospectively to additional reforms that the Department of Social Services (DSS) and the Department of Health Care Services (DHCS) are scheduled to administer in the coming months, including new finger imaging of recipients and fingerprinting requirements for providers and consumers on timesheets.

Content.

This background piece provides the following:

- Guiding key questions to frame the purpose of this hearing.
- Identification of the largest priority areas in implementation to be addressed in the hearing, with more specific, critical questions for each of these.
- Requests from the Legislature to the administration going forward.

Guiding Key Questions for Panelists.

At a high level, the Committees are asking the administration to respond to the following questions, with counties and advocates also providing feedback.

- What has been or continues to be the impact from the problems around the implementation of the provider enrollment changes on November 1, 2009?
- Has the administration resolved all of the issues identified in the last two oversight hearings?
- Are there unresolved and/or new concerns regarding implementation of policy changes?
- Has the administration engaged stakeholders or conducted stakeholder meetings to resolve problems identified by counties and advocates?
- What else could be done to ensure that implementation is completed properly?
- Are the counties, DSS, DHCS, and public authorities on track to implement the provisions that are effective in April and June, 2010 without the same complications and problems of implementation we faced with the November changes?
- What is being done to ensure smooth implementation and unintended harm to qualified consumers, their chosen providers, and the county workers and systems upon which the program relies?

Priority Areas in Implementation.

Provider Enrollment

New Consumers and Providers – November 1, 2009 Implementation

Effective November 1, many IHSS consumers faced unprecedented difficulties accessing program services. DSS implemented a large volume of changes in provider enrollment on that date with late, confusing, conflicting, and incomplete instructions to counties. As of January 8, 2010, DSS reported that there were 5,653 providers who had completed the new enrollment process and 11,983 provider applicants in pending status, for a total of 17,636.

The counties report that prior to November 1, 2009, there were next to no delays in enrollment of new providers (which took 2-3 days at that time, rather than the current timeline of at best 2-3 weeks). It is uncertain how consumers are being impacted by this provider enrollment backlog. Those of the 11,983 providers who have already begun caring for consumers will not be paid through the program until they complete their enrollment process.

Questions:

- *What is happening to consumers who are unable to secure an existing provider on the registry or a new provider who is willing to work without pay for 2-3 months?*
 - ◆ *Are these consumers being denied authorized services altogether?*
 - ◆ *Are some consumers managing to pay providers out of pocket? And if so, how will they recover their funds once the provider is enrolled and eligible for back pay?*
- *What is being done to advise the 12,000+ providers who are in "pending" status that they will be eligible for retroactive pay if they are later enrolled? What is being done to properly track their time worked? What readiness will there be to pay them when they are ultimately approved?*
- *How does the 12,000 number break out? What categories of providers are included in this number?*
- *How has DSS responded to questions and issues with pending All-County Letters (ACLs) raised in letters from CWDA, UDW, and the other advocates?*
- *What is DSS's current policy on disqualifying felonies and misdemeanors given pending litigation and existing court orders? What is the statutory basis for use of the Suspended and Ineligible List?*
- *Have any new provider applicants been denied the ability to enroll thus far? What issues have been raised regarding the Provider Enrollment Appeals process?*

Completion of Provider Enrollment Process for Current Providers – June 30, 2010 Deadline

It is estimated that approximately 385,000 providers who were enrolled prior to November 1, 2009 are required to undergo most of the same requirements that new providers are subject to by a deadline of June 30, 2010. These requirements include the criminal background check, completion of orientation at the time of enrollment for new providers, and signed acknowledgement of receipt of orientation materials for current providers.

Questions:

- *What is the outlook and what are the challenges for meeting the requirements for current providers before the June deadline?*
- *What are the consequences for a current provider who has not met the requirements on July 1, 2010, the day after the deadline?*
- *What will happen to recipients' access to services on July 1, 2010 if there is a huge backlog of current providers who have not yet been able to complete all of the requirements?*

Program Integrity and Anti-Fraud Program Reforms

Fingerprinting Requirements and Time Sheet Changes – April 1, 2010 Implementation

Beginning April 1, 2010, finger imaging will be required for new consumers, to be conducted in their homes at the time of initial assessment. Current consumers (460,000) will be finger imaged at their next reassessment, conducted annually and also in the home, with exemptions for minors and those physically unable to provide fingerprints due to amputation. The statute does not in any place require a picture image to be taken of the consumer. The statute requires DSS to consult with county welfare departments to develop protocols to carry out these requirements. To date, this formal consultation toward protocol development with the counties has not occurred.

DSS has provided minimal information on its readiness to begin finger imaging on April 1. The Department's proposed 2010-11 budget references an "interim solution" of "fingerprint ink, cards, and Polaroid cameras" to be used "until rollout of handheld portable [Statewide Fingerprint Imaging System (SFIS)] devices following thorough testing." No specific information on materials cost, training for social workers, information for consumers, or longer-term plans for a final solution has been submitted to the Legislature.

Additionally, time sheets are now required to include a certification by the consumer and recipient that information is true and correct. Effective July 1, 2011, statute also requires the index fingerprint of providers and recipients to be included on timesheets.

Questions:

- *What is the plan for stakeholder collaboration to formulate the April 1, 2010 protocols for implementation of the consumer finger imaging policy?*
- *What is the specific timeline and plan for draft and final instructions, mailers, bulletin board postings, etc. for implementation of this policy?*
- *Why is the administration requiring Polaroid pictures of consumers when there is no statutory requirement for photographs?*
- *What are the General Fund costs of the administration's proposal for finger imaging and picture-taking of consumers for current and budget years?*
- *What happens to a consumer if a county or social worker is unable to take finger images at the time of the initial assessment?*

Home Visits (Dependent on Protocol Development) and Anti-Fraud Funding for Investigations

The trailer bill authorized unannounced visits to a recipient's home in targeted cases where there is a cause for concern regarding program integrity. Upon enactment of the statute, which was signed July 28, 2009, DSS was required to develop protocols for these home visits and other actions if the provider and recipient are not present at the time of the visit. The statute allowed the provider and recipient the opportunity to address any suspicion of fraud that has resulted in a home visit.

To date, no consultation with stakeholders has occurred on the home visit protocol, yet advocates and counties cite reports of home visits taking place in the program given the recent increase in state investigators at the Department of Health Care Services. The number of investigators was increased in the 2009-10 Budget from two to 32. Additionally, the Legislature appropriated \$10 million in new General Fund dollars for counties to investigate fraud based on plans submitted to the state.

Questions:

- *What is the plan for stakeholder collaboration, drafting, and approval of protocols for implementation of the home visit policy?*
- *Are state and county agencies already making unannounced home visits?*
- *How has the administration confronted the issue of on-going, previously existing activities and "new" activities made possible by the 2009-10 appropriation? How does this reconcile with the needed development and implementation of protocols as required in statute now?*
- *How has the anti-fraud augmentation been administered? What is the funding being used for? How does the administration account for its projected savings in this area?*

Targeted Mailings (Dependent on Protocol Development)

The trailer bill requires DSS to develop protocols for targeted mailings to providers and recipients, intended to inform both of program rules and the consequences of failing to adhere to them.

Questions:

- *What is the plan for stakeholder collaboration, drafting, and approval of protocols for the implementation of the targeted mailing policy?*
- *What is the specific timeframe for commencing targeted mailings?*
- *Can the administration provide a paper overview of its current activities under SB 1104, passed in 2004, to show how targeted mailings fit within the broader context of Quality Assurance and anti-fraud efforts already adopted as part of that ongoing effort?*

Requests Moving Forward.

The sponsoring Committees for this oversight hearing make the following formal requests on behalf of the Legislature:

1. A high-level update on remaining issues as identified by DSS and the advocates on provider enrollment, separately for new and current providers. This should include what counties and Public Authorities are identifying as continuing difficulties and barriers to implementation.
2. A schedule and plan for meeting the April 1 fingerprinting implementation date, including a formalized plan for stakeholder involvement, related costs, and a timeline for draft and final county instructions.
3. Similar plans per #2 above for protocol development for the home visit and targeted mailing policies.
4. An update on the allocation of the anti-fraud dollars by county, showing General Fund and other sources, a description of what the dollars are being used for, pursuant to the county plans, a discussion of how impact will be evaluated, and detail on expected program savings generated as a result of this appropriation.
5. A list of stakeholders that DSS is working with, with a plan for scheduled meetings with these stakeholders, noting topics to be discussed and key milestones to meet. Legislative staff are also named as stakeholders in statute and should be included.
6. Sharing of all draft and final All County Information Notices (ACINs), All County Letters (ACLs), Forms, and Mega Mailers with principal legislative staff (leads from four caucuses and leadership).

**SUMMARY OF MAJOR REFORMS ADOPTED
IN THE IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM
AS PART OF THE 2009-10 BUDGET AGREEMENT**

IHSS	Statutory Implementation Date
Anti-Fraud / Quality Assurance / Program Integrity	
<u>Application for IHSS</u> - Must notify recipients that the provider will get a copy of authorized hours. (ABX4 19 Sec 1)	Jan 1, 2010
<u>NOA Lite</u> - DSS to develop a process to ensure that provider receives list of services authorized for recipient in consultation with CWDs and stakeholders. (ABX4 19 Sec 2)	Dec 31, 2011
<u>New Provider Orientation</u> - All prospective providers must complete orientation at time of enrollment. (ABX4 19 Sec 3)	Nov 1, 2009
<u>Current Provider Orientation</u> - All current providers must receive orientation information and submit a signed agreement. (ABX4 19 Sec 3)	Between Nov 1, 2009 and June 30, 2010
<u>Timesheet</u> - Must be signed by provider and recipient under penalty of perjury. Must contain index fingerprint of recipient and provider in order to be valid. (ABX4 19 Sec 4)	July 1, 2011
<u>Standardized Curriculum</u> - DSS shall ensure a standardized curriculum and training materials are developed for county social workers for purpose of preventing fraud. (ABX4 19 Sec 6)	On or before July 1, 2010.
<u>Targeted Mailers</u> - DSS shall consult with CWDs and stakeholders to develop protocols for the implementation of targeted mailings. (ABX4 19 Sec 6)	Effective as of the date the legislation takes effect. No due date for protocols.
<u>Home Visits</u> - Adds to county QA functions that monitoring "may include" a home visit to verify receipt of services, and requires DSS to develop protocols for the visits in consultation with CWDs. (ABX4 19 Sec 7)	Effective as of the date the legislation takes effect. No due date for protocols.
<u>Recipient Fingerprinting</u> - Requires DSS to develop protocols and procedures for fingerprinting recipients. New recipients on or after Apr 1, 2010 will provide fingerprints as part of assessment. Existing recipients will provide at next reassessment. (ABX4 19 Sec 8)	Upon completion of the protocols and procedures, DSS is authorized to take necessary steps to implement by April 1, 2010.
<u>Investigation of Fraud</u> - Allows counties to investigate fraud subject to uniform statewide protocols to be developed by DSS in consultation with CWDs and stakeholders. (ABX4 19 Sec 9)	Effective as of the date the legislation takes effect. No due date for protocols.
<u>Data Sharing</u> - Allows DHCS, DSS, and counties to share data as necessary to prevent fraud and investigate suspected fraud. (ABX4 19 Sec 9)	Effective as of the date the legislation takes effect.

IHSS	Statutory Implementation Date
<u>Notification of Suspected Fraud</u> - Requires county to notify DSS and DHCS if it concludes that there is reliable evidence that a provider or recipient has engaged in fraud. (ABX4 19 Sec 9)	Effective as of the date the legislation takes effect.
<u>Termination of Eligibility</u> - States that failure to comply with program requirement may result in termination from the program subject to due process. (ABX4 19 Sec 9)	Effective as of the date the legislation takes effect.
<u>Provider Address</u> - States that a provider enrollment form must use a physical address, and that checks cannot be mailed to a P.O. box unless the county approves a request from the provider. (ABX4 19 Sec 10)	Effective as of the date the legislation takes effect.
<u>Provider Enrollment Form</u> - County staff must view original documents and see provider in person. (ABX4 4, Sec 27)	July 28, 2009
<u>Implementation Report</u> - DSS to convene stakeholders to develop and issue a report evaluating implementation of QA and fraud activities from 2004 to present. (ABX4 4, Sec 28)	Report due by Dec 21, 2010
<u>\$10 Million</u> - Allocates \$10 million to counties to be used for fraud and QA activities. (ABX4 1, Sec 576)	To be allocated upon approval of county-submitted plans to DSS.
<u>New DHCS Staff</u> - 13 staff in DHCS in current year, plus another 30 staff in budget year. (ABX4 1, Sec 576)	Jul 28, 2009
<u>New DSS Staff</u> - 12 positions in the current year and 12 positions in the budget year. (ABX4 1, Sec 576)	Jul 28, 2009
<u>Budget estimate</u> - Budget language requires DHCS and DSS to submit a revised budget to the Legislature "to the extent that implementation responsibilities and new costs are required of county welfare departments for new local activities" (ABX4 1, Sec 576)	No due date specified.
Provider Background Checks	
<u>New Provider Background Check (Registry)</u> - Requires new providers to submit to a background check to be on the registry. (ABX4 19 Sec 5)	Effective as of the date the legislation takes effect.
<u>New Provider Background Check (Non-Registry)</u> - Requires county to background-check new providers not listed on a registry. (ABX4 19 Sec 11)	Oct 1, 2009
<u>Current Provider Background Check (Registry)</u> - If on registry without a background check as of effective date of legislation, provider must be checked. (ABX4 19 Sec 5)	By July 1, 2010
<u>Current Provider Background Check (Non-Registry)</u> - Requires county to background-check current providers not listed on a registry. (ABX4 19 Sec 11)	By July 1, 2010
<u>Written Appeal Process</u> - Requires DSS to develop a written appeal process for current and prospective providers determined ineligible based on background check. (ABX4 19 Sec 5, 11)	Effective as of the date the legislation takes effect. No due date for protocols.

IHSS	Statutory Implementation Date
Service Reductions	
<p><u>Eliminate Share of Cost Buyout</u> - Effective as of date signed, only those receiving SOC buyout as of June 30, 2009 may continue to receive it; as of Oct 1, 2009, the SOC is eliminated. (ABX4 4 Sect 26)</p>	<p>Grandfathering: Jun 30, 2009; Elimination: Oct 1, 2009</p>
<p><u>Eliminate Domestic & Related Services</u> - Limits domestic or related services to those with a functional index score of 4 or 5. (ABX4 4, Sec 29)</p>	<p>Effective Sep 1, 2009; Emergency Regs by July 1, 2010.</p>
<p><u>Eliminate All IHSS Eligibility</u> - Limits IHSS to those with a functional index score of 2 or above. (ABX4 4, Sec 30)</p>	<p>Effective Sep 1, 2009; Emergency Regs by July 1, 2010.</p>
<p><u>NOA Changes</u> - Requires DSS to modify NOA to inform those whose eligibility is limited or eliminated of their FI rank and FI score. (ABX4 4, Sec 30)</p>	<p>No later than Sep 1, 2009</p>



IHSS Coalition

QUALITY CARE BEGINS AT HOME

January 25, 2010

The Honorable Noreen Evans
Chair, Assembly Budget Committee
State Capitol, Room 6026
Sacramento, CA 95814

The Honorable Mark Leno
Chair, Senate Budget Subcommittee #3
State Capitol, Room 5019
Sacramento, CA 95814

**RE: IMPLEMENTATION OF IHSS PROGRAM CHANGES ENACTED IN THE
FY 09-10 BUDGET**

Dear Assembly Member Evans and Senator Leno;

The IHSS Coalition is a group comprised of thirty-two organizations representing IHSS consumers, providers and advocates. Our common goals are (1) to ensure sufficient funding for In-Home Supportive Services and its interrelated aspects (2) to develop potential improvements for the program, (3) to disseminate information on homecare issues through public events and our website, and (4) to preserve and enhance consumer-directed services.

We appreciate the Assembly Budget Committee and Senate Budget Subcommittee #3 convening another oversight hearing on the implementation of the changes to the IHSS program enacted as part of the July 2009 budget package. The IHSS Coalition supported the provisions of SB 69 to delay the November 1 implementation mandate on counties to give them the time they desperately need to allow for adequate funding and instruction to come from the state. While SB 69 cleared the Assembly with a strong, bipartisan vote, it was held up in the Senate and the measure did not reach the Governor's desk. The CDSS letter in opposition to SB 69 stated, "We share the Legislature's interest in providing a smooth and safe transition, but at this point, statutory changes would reverse actions already taken and further confuse the implementation process. It is better to focus the collective effort of CDSS staff, county welfare department staff, public authority and labor partners on resolving issues for the recipients that might experience difficulty getting their chosen new provider enrolled."

Despite the numerous All-County Letters and All-County Information notices that have been released since the enactment of ABX4 4 and ABX4 19, we continue to believe that counties and Public Authorities have not been provided clear instructions that comply with the law. Even worse, some instructions from the CDSS are unlawful and have added to the chaos that exists in many counties around the new Provider Enrollment requirements. Counties have not been given sufficient time to implement the new statutes in a rational manner. At least 19 counties have sent letters to DSS complaining that the new rules have been put into place too quickly, and without proper guidelines and training for the counties.

The consequences for consumers and providers are severe:

- providers who do not meet their enrollment requirements are prevented from receiving payment from the state; or
- consumers who are unable to secure a provider (who is willing to work without getting paid) are unable to receive authorized services, which is the same consequence as if they had been denied services.

The CDSS reported in the January 12, 2010 letter to Assembly Member Evans that nearly 12,000 IHSS providers are in a “pending” status – which means they are not getting paid. Thousands of new IHSS providers have gone without pay for services they have provided for 2-3 months. In some instances, consumers are paying these providers in “pending” status out of their own extremely limited funds.

INTERACTION OF CDSS & STAKEHOLDERS: Sending out draft All-County Letters (ACLs) to groups and organizations for feedback is appreciated. However, the members of the IHSS Coalition must relay our distress with the limited opportunity for consumer or provider input into the policy changes that are being developed by CDSS. We are all frustrated with the extremely limited timeframes that have been set by the California Department of Social Services (CDSS) to analyze the draft ACLs. When our coalition and others have responded, despite the short timeframes, we have received no response nor have the vast majority of our comments, requests and suggestions been reflected in the final products.

There have been draft ACL's and new forms that have not been shared with the IHSS Coalition. In the process of “cleaning up” their email lists, CDSS deleted key organizations and individuals from the distribution of draft ACLs that prevented the IHSS Coalition from commenting on draft documents by the deadline set by the Administration. In addition, the coalition did not receive the draft Risk Assessment & Back-Up Plan Form. Section 42 of ABX4 4 clearly requires CDSS to develop a risk management form, with input from the counties and stakeholders representing recipients and providers, no later than 90 days from the date of approval of the 1915(j) State Plan Option. We know that CDSS circulated the draft form to counties in December 2009 and has not shared the draft form with the broader stakeholder community as required by statute.

We note in the CDSS letter of January 12, 2010 to Assembly Member Evans that they have produced 10 Electronic Bulletin Board (EBBs), 1 APB, 1 Board of Supervisors letter, and 3 “Notices” regarding IHSS Program changes. These documents have never been shared with the IHSS Coalition in draft or final form.

On January 21, 2010, CDSS issued a letter to IHSS Stakeholders regarding their plans for upcoming stakeholder meetings. A number of organizations that participate in the IHSS Coalition have not received this letter. It would be helpful to learn which organizations and individuals are on the CDSS distribution list to ensure that a broad stakeholder community is invited to participate, as required by statute, in developing the policies, procedures and protocols associated with implementation of the Anti-Fraud initiative.

MISREPRESENTATION OF PROGRAM RULES

Both the provider orientation training video and the written orientation materials misrepresent the role and ability of the consumer in directing the provider; the provider orientation guide says:

“Can I spend the time authorized for specific tasks doing other IHSS tasks?”

No. Time may only be used specifically as identified by the county. If it takes less than the authorized time to complete a task, the remaining time cannot be spent to increase the time on other services.”

- 1) The hourly task guidelines are a tool for assessing the services a consumer needs – they are not a prescription for minutes and hours actually used. In fact, the Notice of Action for IHSS does not even include a daily allotment of minutes per task.
- 2) This newly invented policy does not reflect the reality of the lives of consumers; if a consumer needs to have additional laundry done on a particular day and is willing to forgo meal prep because of it, that is not fraud and it is not forbidden by statute. Does CDSS intend that the consumer should call the county social worker and ask for additional minutes for laundry every time that need arises?

CDSS is setting up conflict between consumer and providers by including this unauthorized policy in a document whose major focus is fraud.

ISSUES WITH FELONIES AND MISDEMEANORS PREVENTING PROVIDER EMPLOYMENT: On January 14, 2010, the CDSS released a draft ACL pertaining to Department of Justice (DOJ) and criminal background check procedures. The draft advises counties that the DOJ will provide criminal records based on Welfare & Institutions Code 15660. This basically re-establishes the unlawful policy that the Administration attempted to impose last year that expanded the list of disqualifying crimes beyond those contained in Welfare & Institutions Code 12305.81 (a).

The Administration does NOT have any authority to unilaterally impose a list of non-exempt crimes [beyond those contained in Welfare and Institutions Code 12305.81 (a)] that would bar any individual from serving and being paid as an IHSS provider. Current law only restricts consumers from hiring an individual who has been convicted within the past 10 years for fraud against a government health care or supportive services program and/or felony child, elder and dependent adult abuse.

The list of disqualifying crimes is being litigated under *Beckwith v. Wagner*. Until these issues are resolved in court, CDSS should confine the list of disqualifying crimes to those specified in Welfare & Institutions Code 12305.81 (a) which established the crimes that would make an individual ineligible to be a provider in the IHSS program are limited to a conviction (or incarceration following a conviction) within the last 10 years for: 1) fraud against a governmental health or supportive services program; 2) abuse of a child; or 3) abuse of an elder or dependent adult. Likewise, the Provider Orientation training video and handbook should be immediately revised to limit the disqualifying crimes to Welfare & Institutions Code 12305.81 (a).

UNLAWFUL USE OF CRIMINAL BACKGROUND RECORDS: The January 14, 2010 draft ACL states, “Based upon an official DOJ policy dating from 2006, which will supersede all past/current CORI policy, counties/PAs are allowed to provide specific information to the PEAU.” Despite requests to the CDSS and the DOJ, they have not provided us a copy of this DOJ policy and we are concerned that basic privacy rights and confidentiality requirements are being undermined.

Penal Code Sections 11105 and 13300 identify who may have access to criminal history information and under what circumstances it may be released. The retention and sharing of CORI records between employing and licensing agencies are strictly prohibited. The retention and sharing of information infringe upon the right of privacy as defined in the California Constitution, and fails to meet the compelling state interest defined in *Loder v. Municipal Court (1976) 17 Cal. 3d 859*.

The CDSS does not have authority to create a requirement in any All-County Letter that violates or surpasses its authority under current law.

We understand that these confidentiality restrictions may render the appeals process to be somewhat useless if the county deems a provider to be ineligible solely for reasons associated with the individual’s criminal records. This is a critical issue and should be resolved with legislative involvement and with coordination with the Department of Justice before CDSS issues any final ACL on the provider appeals process.

RETROACTIVE PAY: While the IHSS Coalition agrees with the policy expressed by CDSS to recognize the right to retroactive pay, we believe that more information is needed to operationalize the policy. Counties should be instructed on how to inform applicants/providers about how to keep track of time while the applicant/provider is waiting to receive the official timesheet. Counties should also be provided with instructions about

how to produce official timesheets to cover the entire time period, dating back to the submission of the SOC 426A (IHSS Program Recipient Designation of Provider), so the new provider can be paid for time that services were provided. As indicated above, we know that some IHSS consumers are paying providers who are stuck in “pending status” out of their own pockets. Information is needed about how these individuals will recover those funds once the provider receives the retroactive payment.

We have requested this information from CDSS and have not received any response.

MEDI-CAL SUSPENDED & INELIGIBLE LIST: The IHSS Coalition is concerned about the CDSS requirement on counties to the use of the Medi-Cal Suspended and Ineligible (S & I) Provider list as a device to deem providers to be ineligible for payment by the IHSS program. We cannot find any specific statutory mandate for counties to use the Medi-Cal Suspended & Ineligible List to determine the eligibility for individuals to be paid by the IHSS program.

We reviewed the December 2009 edition of the Schedule U (which contains the list of IHSS Providers) and were alarmed to see IHSS providers who are on the list far beyond the time period specified for them to be ineligible for payment. For example, Julie Ann Cross was added to the S&I list on October 20, 2009 under Schedule U and is specifically listed as an ineligible IHSS provider. Julie Ann Cross is listed as “Suspended indefinitely.” Welfare and Institutions Code 12305.81 (a) establishes a ten-year period for IHSS providers to be deemed ineligible if they have been convicted of specific crimes. We are unable to find any statutory authority for an IHSS provider to be suspended or ineligible for payment beyond the ten-year timeframe.

UNANNOUNCED HOME VISITS: State and county agencies area already started making unannounced home visits, sometimes using armed investigators, without waiting for and having the benefit of the guidelines required by statute. Consumers do not know why they are being visited, they do not know the consequences of completely innocent absences from their home, or their rights to refuse an unannounced home visit, which may happen while they are in the middle of personal care such as bathing and toileting.

Welfare and Institutions Code 12305.71 (c) requires CDSS to develop policies, procedures, implementation timelines, and instructions under which quality assurance activities (including unannounced home visits) will be performed. The IHSS Coalition believes these unannounced home visits should STOP until the required guidelines are completed.

FINGERPRINTING CONSUMERS: Welfare and Institutions Code § 12305.73 requires any IHSS consumer whose initial client assessment occurs on or after April 1, 2010, to be fingerprinted at the same time of initial assessment by a social worker. Consumers that are currently receiving IHSS services on April 1, 2010, will be fingerprinted by a social worker during the recipient’s next reassessment. Any individual who is a minor or

who is physically unable to provide fingerprints due to amputation or other physical limitations is exempt from any requirement to provide fingerprints.

The CDSS Local Assistance Binder for FY 10-11 states, “the budget includes funds associated with personnel, networking, training and site maintenance, establishing infrastructure, ongoing circuit costs, portable units on Statewide Fingerprinting Imaging System (SFIS) desktops which transmit data to the central unit, and management of remote stations, fingerprint ink and cards, and Polaroid cameras [emphasis added]. Fingerprint ink, cards and Polaroid cameras will be used as an interim solution until rollout of handheld portable SFIS devices following thorough testing.”

Members of the IHSS Coalition were alarmed to learn that CDSS intends to require social workers to take pictures of consumers as part of the fingerprinting process. There is no statutory requirement or authorization for Polaroid cameras or other digital imaging devices to be used as an “interim solution” to implement the statute on fingerprinting consumers. This appears to be another situation where CDSS intends to impose unlawful requirements on the counties that are unnecessary and intrusive to IHSS consumers. Given the financial troubles that California is facing, and the proposed drastic cuts to IHSS services, it is outrageous to spend limited IHSS program funds on this unauthorized temporary solution.

Sincerely,

AARP-California
ACLU of Southern California
American Federation of State, County and Municipal Employees (AFSCME)
California Alliance for Retired Americans (CARA)
California Association of Public Authorities for IHSS (CAPA)
Californians for Disability Rights, Inc. (CDR)
California Disability Community Action Network (CDCAN)
California Foundation for Independent Living Centers (CFILC)
California In-Home Supportive Services Consumer Alliance (CICA)
California Senior Legislature
California United Homecare Workers (CUHW)
Congress of California Seniors
Disability Rights California
Gray Panthers California
IHSS Public Authority of Marin County
Independent Living Services of Northern California
Independent Living Resource Center Inc.
Marin Center for Independent Living
National Senior Citizens Law Center
Nevada Sierra Regional IHSS Public Authority
Northern California ADAPT
Older Women’s League California (OWL)
Personal Assistance Services Council of Los Angeles County

Quality Homecare Coalition
Resources for Independent Living
San Francisco IHSS Public Authority
Service Employees International Union – State Council
SEIU United Long Term Care Workers
SEIU United Healthcare Workers West
SEIU Local 521
Silicon Valley Independent Living Center (SVILC)
UDW Homecare Providers Union/AFSCME

cc: Myesha Jackson, Office of the President Pro Tempore
Gail Gronert, Special Assistant, Assemblywoman Speaker Bass
Nicole Vazquez, Consultant, Assembly Budget Committee
Jennifer Troia, Consultant, Senate Budget Committee
Julie Souliere, Assembly Republican Fiscal Office
Chantele Denny, Senate Republican Fiscal Office
Frank Mecca, CWDA
Ginni Bella, Legislative Analysts Office
Kim Belshe, California Health & Human Services Agency
John Wagner, California Department of Social Services
Eva Lopez, California Department of Social Services
Patricia Houston, California Department of Social Services



JOHN A. WAGNER
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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ARNOLD SCHWARZENEGGER
GOVERNOR

January 12, 2010

The Honorable Noreen Evans, Chair
Assembly Budget Committee
California State Assembly
State Capitol, Room 6026
Sacramento, CA 95814

Dear Assembly Member Evans:

This letter provides answers to questions asked by members of the Assembly Budget Committee during the November 5, 2009 hearing on the In-Home Supportive Services (IHSS) program. Additionally, this letter provides an update on the efforts of the California Department of Social Services (CDSS) and our county partners to implement the IHSS changes enacted last year. As implementation issues arise or are brought to our attention, CDSS continues to work with counties and other stakeholders to provide guidance and clarity. We are aware of your intention to hold another oversight hearing at the end of this month. We look forward to providing an update at that time and responding to any additional questions from you and your colleagues.

The enactment by the Legislature and Governor of ABX4 4 and ABX4 19 required continuous dialogue between CDSS, the counties, and other stakeholders to implement those changes. CDSS has issued numerous communications and directions to facilitate implementation of the IHSS program changes, including All-County Letters (ACLs), All-County Information Notices (ACINs), Electronic Bulletin Boards, and other communications. These documents, most developed within very tight timeframes in communication with key stakeholders, are summarized in Enclosure 1 and largely highlight the major IHSS changes below:

- Instructions to counties have been issued on provider enrollment, orientation and appeals activities.
- Recipient notices have been issued related to provider enrollment requirements and other program changes.
- Fiscal Year 2009-10 funding was augmented and has been allocated to support the new program and administrative requirements.
- Written materials related to provider enrollment and provider orientation have been translated into the three threshold languages for IHSS (Spanish, Chinese, and Armenian) and are available to counties.

- County boards of supervisors have applied for and been awarded (in some cases tentatively) anti-fraud funding.
- We are receiving feedback from stakeholders on a comprehensive draft "question and answer" (Q&A) ACL, and will be splitting it into two ACLs and making other changes in response to their input and suggestions. The final versions of these two ACLs will be released in January, one sooner than the other.
- Instructions and recipient notifications were also issued related to IHSS functional index rank and score criteria (service reductions), the proposed reduction in the state's financial participation in IHSS wages, and the elimination of the state IHSS supplementary payment program. Those program changes, as well as the types of crimes which would disqualify a person from participating as an IHSS provider, have been affected by litigation. Enclosure 2 is a summary and status of the litigation related to the IHSS program changes.

Below is a list of questions that members asked during the hearing, followed by our responses:

1. *What is CDSS doing to monitor implementation issues and problems?*

The IHSS program is overseen by the State, and administered and operated at the county level. We are in frequent communication with counties to discuss any issues they are encountering, including any issues involving the Case Management Information and Payrolling System (CMIPS). For example, conference calls were held on December 1 and 23, 2009 to solicit information regarding county implementation issues, particularly as they relate to the Department of Justice's involvement. As requested in a December 31, 2009 letter sent to many county welfare directors (Enclosure 3), counties and Public Authorities will continue to inform us as they identify difficulties and barriers to implementation so that we can jointly determine if further instruction/clarification is warranted, or if systemic changes may be needed.

On November 2, 2009, all counties received a direct point of contact for all IHSS provider enrollment questions. Additionally, the provider enrollment system vendor's (Electronic Data Systems') help desk provides assistance with technical questions or problems. CDSS continues to respond to all questions from counties and other stakeholders, and is tracking the types of questions received and their resolutions.

2. *How many people since the November 1 implementation date have been retained in nursing homes, rather than being released to their home with IHSS in place?*

If an individual requires an assessment in a nursing facility, a county social worker performs an assessment at the facility to determine the kind of services and the amount of hours the recipient needs. Once the preliminary services and hours are assessed, the social worker assists the recipient in finding a provider, by referring them to the Public Authority registry, referring them to an existing provider not yet

subject to these particular enrollment changes, or instructing the recipient on the process their new prospective provider needs to pursue. CDSS and counties do not collect information as to the numbers of people who remain in nursing homes or experience discharge delays rather than being released to their home or another setting.

3. *Has CDSS identified any impediments that will harm people?*

Some counties have notified CDSS of instances that have resulted in delays in providers being enrolled in the program and in situations in which recipients are not able to immediately employ their provider of first choice because of the new enrollment process.

Based on collected information, including a December 30, 2009 contact to counties, a variety of issues have been identified that impact provider enrollment timeframes – ranging from just recently receiving their Originating Response Indicator numbers from the Department of Justice, final approval from the county Board of Supervisors, contract delays between counties and Public Authorities, to time spent clarifying and resolving issues that have been identified, delays in data entry into CMIPS, and changing instructions as a result of ongoing litigation. CDSS, counties, and Public Authorities continue to address issues that require systemic program or policy changes, in addition to resolving individual situations.

4. *Have any specific examples of adverse impacts resulting from the November 1 implementation date come to the attention of CDSS?*

We continue to listen to the many IHSS stakeholders, recipients, and providers that have offered comments and feedback, and continue to work with counties on implementation issues that are encountered. Regular monthly stakeholder meetings also will be held. We regret that we cannot more fully answer this question due to pending litigation.

5. *How many IHSS providers have been enrolled since November 1?*

As of January 8, 2010 there are 5,653 providers who have completed the new enrollment process and are now enrolled, and 11,983 individuals in pending status which means they are going through the provider enrollment process, for a total of about 17,636 providers. Please note that the "Ellis v. Wagner" litigation also has impacted the provider enrollment process (see Enclosure 2 for a description of this case).

6. *Can we provide any assurance that new IHSS providers will get paid retroactively?*

As has been the standing practice even before enactment of these reforms last year, CDSS will provide retroactive payments for time worked to each approved IHSS provider, back to the date on which the recipient first employed that provider.

7. *Does CDSS have a legal process to determine if the state is out of compliance with the *Olmstead v. L.C.* ruling?*

CDSS follows federal and state statutes, regulations and court decisions as normal operating procedure when developing, implementing, and administering policies and procedures.

8. *What is left to do in terms of implementation of the IHSS program changes?*

As is the case whenever there are significant changes to an existing program, there is a lengthy list of implementation activities and it is not unusual to continue to be engaged in ongoing implementation activities for a long period of time. For the enacted IHSS program changes, this list of activities continues to evolve as a result of county and stakeholder input, litigation, and experience. Beyond implementation of provider enrollment provisions, the following provisions will be implemented over the next year: home visits to ensure recipients are receiving the services for which they have been approved, by the providers who will be billing for those services; recipient fingerprinting for the prevention and detection of fraud; targeted mailings to individuals who appear to have not complied with the program requirements; preparation activities for fingerprints of recipient and providers to be attached to the timesheet; and necessary information technology system changes and updates. We will be happy to elaborate on these items at your forthcoming hearing, if you wish.

9. *Will CDSS be convening a stakeholder process for the remaining implementation activities?*

In addition to our ongoing commitment and partnership to identify and resolve issues, CDSS will be convening additional periodic stakeholder meetings in 2010 and 2011. Among other program changes, these stakeholder meetings will address the anti-fraud protocols and activities, social worker fraud training, a report to the Legislature on quality assurance and fraud prevention and detection, development of new provider orientation materials, development of a notice to inform providers regarding the recipient's authorized hours and tasks, the prohibition on the use of a P.O. Box on the provider enrollment form, and ongoing meetings to review implementation and address any further changes that may result from litigation.

Thank you for your interest and concern regarding implementation of these enacted changes to the IHSS program. We have a shared goal of implementing these changes as smoothly as possible to minimize any harm to, and maximize protections for, recipients and providers participating in the IHSS program. If you would like additional information or have questions, please contact me at 916-657-2598.

Sincerely,



JOHN A. WAGNER
Director

Enclosures (3)

- c: Honorable Members of the Assembly Budget Committee
- Honorable Members of the Senate Budget and Fiscal Review Subcommittee #3
- Danny Alvarez, Senate Budget and Fiscal Review Committee
- Jennifer Troia, Senate Budget and Fiscal Review Subcommittee #3
- Christian Griffith, Assembly Budget Committee
- Nicole Vazquez, Assembly Budget Subcommittee #1
- Seren Taylor, Senate Republican Fiscal Office
- Chantele Denny, Senate Republican Fiscal Office
- Julie Souliere, Assembly Republican Fiscal Office
- Jack Hailey, Senate Human Services Committee
- Lark Park, Senate Human Services Committee
- Joe Parra, Senate Republican Policy Office
- Eric Gelber, Assembly Human Services Committee
- Mary Bellamy, Assembly Republican Policy Office
- Myesha Jackson, Office of the Senate Pro Tempore
- Gail Gronert, Office of the Assembly Speaker
- Sara McCarthy, Senate Office of Research
- Todd Bland, Legislative Analyst's Office
- Ginni Bella, Legislative Analyst's Office
- Scott Carney, California Health and Human Services Agency
- Jennifer Kent, Office of Governor Arnold Schwarzenegger

ABX4 4 and ABX4 19 Implementation
Documents Released: September 1, 2009 – December 28, 2009

Date	Document Type	Document #	Document Description
December 2009			
12/28/09	CFL	09/10-43	In-Home Supportive Services (IHSS) County Anti-Fraud Plans
12/28/09	CFL	09/10-40	Fiscal Year (FY) 2009-10 Allocation For Fraud Investigations and Program Integrity Efforts Related to the In-Home Supportive Services (IHSS) Program
12/23/09	EBB	09-023	Overpayment Processing
12/16/09	EBB	09-022	Provider SSA Verification File
12/10/09	CFL	09/10-37	Time Study and Claiming Instructions for IHSS Anti-Fraud Initiative Administrative Activities
12/8/09	ACIN	I-87-09	Request for County IHSS Provider Appeals Contact Information
12/7/09	EBB	09-021	November 1, 2009 SSI/SSP payment Standard Update
November 2009			
11/25/09	ACL	09-78	<i>Mary Beckwith, et al. v. John A. Wagner, et. al.</i> Temporary Restraining Order Limiting IHSS Provider Disqualifying Crimes to those Crimes Listed in WIC Section 12305.81
11/10/09	APB to IHSS Program Managers		Availability of Translated Forms Related to the Expanded IHSS Provider Enrollment Requirements
11/3/09	EBB	09-016	Provider Enrollment Update
11/2/09	EBB	09-015	CMIPS further instruction for New Provider Enrollment Requirements
October 2009			
10/31/09	ACL	09-70	Provider Fingerprinting and Criminal Background Check
10/31/09	ACL	09-69	IHSS Provider Enrollment Agreement (SOC 846) & Revised IHSS Recipient/Employer Checklist (SOC 332)
10/31/09	ACL	09-68	IHSS Provider Appeals Process
10/31/09	ACL	09-63	Revised IHSS Recipient Application Form (SOC 295)
10/29/09	ACL	09-66	CMIPS Modifications for New Provider Enrollment Requirements
10/29/09	CFL	09/10-33	FY 2009-2010 Planning Augmentation for Administration of IHSS Program

**ABX4 4 and ABX4 19 Implementation
Documents Released: September 1, 2009 – December 28, 2009**

Date	Document Type	Document #	Document Description
10/28/09	ACL	09-54	IHSS Provider Orientation
10/27/09	Recipient Notice – Injunction		Notice to impacted Recipients of IHSS Service Reduction Injunction
10/26/09	EBB	09013	IHSS Service Reductions Injunction – CMIPS Instructions to Restore Recipient Case Information
10/23/09	EBB	09012	IHSS Service Reductions Injunction – CMIPS removal of edits
10/22/09	ACL	09-61	Court Injunction Stopping Reductions of IHSS
10/15/09	Recipient & Provider Mega Mailer		Notice to IHSS Recipients and Providers regarding New Provider Enrollment Requirements
10/13/09	EBB	09-011	IHSS Service Reductions Automated changes in CMIPS and implementation of new edits
10/6/09	EBB	09-010	Provider Enrollment CMIPS Changes
10/5/09	ACIN	I-69-09	Mega Mailer – Informational Documents for IHSS Recipients and Providers regarding New Provider Enrollment Requirements
10/1/09	ACL	09-52	New IHSS Provider Enrollment Requirements and Revised Provider Enrollment Form
10/1/09	ACL	09-53	PA Administrative Budget Reduction for FY 2009-2010
10/1/09	ACL	09-56	IHSS Service Reductions
September 2009			
9/25/09	Letter		Board of Supervisors Letter- Funding for Fraud Investigations and Program Integrity
9/21/09	ACL	09-48	Policy Change Regarding SPEC Transaction (X-27) – Missed BuyOut Reimbursement
9/16/09	ACL	09-47	Elimination of SOC BuyOut
9/14/09	EBB	09-008	Termination of BuyOut

ABX4 4 and ABX4 19 Implementation
Documents Released: September 1, 2009 – December 28, 2009

Date	Document Type	Document #	Document Description
9/5/09	Recipient Notice Elimination BuyOut		Notice to impacted Recipients of Elimination of SOC BuyOut

ACLs	13
ACINs	2
CFLs	4
Notices	3
EBBs	10
APB	1
BOS Letter	1
<hr/> Total	34

SUMMARY OF IHSS LAWSUITS

Beckwith/Ellis v. Wagner

Issue: All Felonies

On November 13, 2009, seven IHSS providers and one recipient filed a lawsuit challenging the policy of the State whereby any person convicted of a felony or serious misdemeanor is precluded from providing IHSS services. The Department took this position based on Welfare & Institutions Code (WIC) sections 12305.81 and 14123, and federal Medicaid and state Medi-Cal statutes and regulations. Plaintiffs argue that the Department has no authority to preclude the individuals at issue from providing services. On November 24, 2009, the Court issued a temporary restraining order (TRO), prohibiting the State from disqualifying providers on the basis of a conviction of any felony or serious misdemeanor but does not prevent disqualifying providers convicted of the crimes listed in WIC 12305.81. The TRO was recently found to be procedurally defective by the Court of Appeal and a hearing to resolve the matter will take place on January 22, 2010.

V.L. v. Wagner

Issue: Functional Index Score/Rank

After the Legislature and the Governor approved the reduction in services for IHSS recipients as part of the Budget Act in Assembly Bill (AB) X4 4, individual recipients of In- Home Supportive Services (IHSS) and various chapters of the Service Employees International Union (SEIU) brought this suit to prevent the implementation of changes to Welfare and Institutions Code sections 12309(e) and 12309.2 that would reduce services. The changes would have required that applicants/recipients of IHSS have a calculated Functional Index (FI) Score of at least 2.00 before services could be authorized. In addition, ABX4 4 mandated that domestic and related services be authorized only for those individuals with a substantial need for that specific service based on a FI Rank of at least 4 in that functional area.

Plaintiffs assert that implementation of the provisions at issue would violate Medicaid requirements, among other federal laws. Plaintiffs also allege that the statutory changes improperly discriminate against children and people with mental disabilities. Plaintiffs further allege that the Notices of Action that would have been sent to IHSS recipients to notify them of the reduction or termination of their services was inadequate.

The judge granted a preliminary injunction on October 19, 2009. The Department has filed a Notice of Appeal of the court's preliminary injunction with the Ninth Circuit Court of Appeal.

Yang/Martinez v. Schwarzenegger

Issue: Wage Reduction

After the Legislature and the Governor approved the reduction in the State's participation in wages/benefits in the February 2009 Budget Act, the SEIU and other parties filed a lawsuit against the reduction. On June 26, 2009, the U.S. District Court issued a preliminary injunction against the reduction in the State's participation, citing that an analysis required by 42 U.S.C. § 1396a(a)(30)(A) must first be completed. The court amended the injunction in July 2009 and required counties to change their wages and benefits to pre-July 1, 2009 levels. Until the injunction is lifted, the State continues to participate in wages and benefits up to \$12.10. On August 7, 2009, an appeal of the injunction was filed with the US 9th Circuit Court of Appeal, and a hearing date has been set for January 19, 2010.

Northern California ADAPT v. CDSS

Issue: Share-of-Cost Buyout

In this case, various advocacy groups and IHSS recipients have filed for a preliminary injunction in San Francisco Superior Court. Plaintiffs are requesting that the court reinstate the program whereby CDSS made payment for medically recognized expenses (MRE) to IHSS recipients, even though this program terminated on October 1 pursuant to ABX4 4. This program is also informally known as the share-of-cost buyout program. Plaintiffs contend that recipients were not given proper notice of the termination of the program for a variety of reasons, including that the notices were only sent in English and that recipients could not understand the content of the notices.

On November 30, the court denied plaintiffs' request for preliminary injunction.



JOHN A. WAGNER
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



ARNOLD SCHWARZENEGGER
GOVERNOR

December 31, 2009

Ms. Cathi Grams, Director and Public Guardian/Public Administrator
County of Butte
Department of Employment & Social Services
P.O. Box 1649
Oroville, CA 95965

Dear Ms. Grams: *Cathi*

This letter responds to your letter and the concerns you and many others have raised regarding implementation of changes to the In-Home Supportive Services (IHSS) program, as enacted by the Legislature and Governor as part of the 2009-10 budget agreement. I sincerely appreciate that you took the time to share your concerns. The IHSS program is an important part of California's long-term care system, serving hundreds of thousands of recipients to enhance their quality of life and in many individual instances avoid institutionalization. The California Department of Social Services (CDSS) and I believe strongly that the nature of these services requires us to do our utmost to comply with the laws enacted by the Legislature and Governor in the most clear and timely manner possible to avoid unintended consequences for IHSS recipients. As implementation issues are identified, CDSS will continue its partnership with counties and other stakeholders to work through the issues to achieve appropriate resolution.

The 2009-10 state budget trailer bills, specifically Assembly Bills 4 and 19 of the Fourth Extraordinary Legislative Session of 2009 (Chapters 4 and 17, respectively), included some very aggressive statutory timeframes for the implementation of the IHSS program changes. Therefore, the bulk of our work, focus, and resources has been directed to those provisions required by statute to be implemented in the first half of this fiscal year. It has been the Department's priority to provide counties, recipients, and providers with clear and timely information and instructions necessary to implement these IHSS program changes. Over the past few months, CDSS has issued numerous All County Letters, All County Information Notices, Electronic Bulletin Board notices, two Board of Supervisors letters, and a County Fiscal Letter. Within roughly the next week, after lengthy and appreciated consultation with the California Department of Justice, many counties, and other stakeholders, at least one additional comprehensive All-County Letter will be issued that responds to issues that have been brought to the Department's attention up to this point.


Ms. Cathi Grams
Page Two

Further, also stemming from this enacted legislation, there is a long list of implementation activities still to come in the IHSS program. This list of activities continues to evolve as a result of litigation, stakeholder input, and our shared ongoing learning experience as we work through issues that arise. These forthcoming activities will be implemented through several topical stakeholder processes, and include but are not limited to: home visits to ensure recipients are receiving the services for which they have been approved, by the providers who will be submitting timesheets for those services; recipient fingerprinting to ensure that resources are available to persons with legitimate need for IHSS services; targeted mailings to persons that do not appear to have complied with program requirements; adding recipient and provider fingerprints to timesheets; and ongoing information technology system changes and updates.

I'd like to again acknowledge the breadth of reforms in our IHSS program that were enacted this year by the Legislature and the Governor. These reforms are certainly and undeniably some of the biggest changes we've made to the program in years. Our collective timeframes within which to implement these changes are extremely tight and aggressive, in some cases complicated by litigation regarding some of the changes, and also constrained by the fiscal and human resource limitations faced by all of us, including CDSS.

Thank you again for your interest, concern and partnership regarding implementation of the enacted changes to the IHSS program. We have a shared goal of implementing these changes as smoothly as possible to minimize any harm and maximize protections for IHSS recipients and providers. In this effort, please continue to bring issues to our attention as soon as possible, and know that we will work diligently with you and other concerned parties to clarify and resolve those issues as effectively and expeditiously as possible. You may contact me and/or Pete Cervinka Program Deputy Director for Benefits and Services at (916) 657-2598 or Eva Lopez, Deputy Director for Adult Programs Division at (916) 653-5403.

With appreciation,



JOHN A. WAGNER
Director